

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

JUL 12 2018

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS I. URESTI,

Defendant.

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SA-17-CR-381(1)-DAE

ORDER

Before the Court is the Motion for Appointment of Appellate Counsel filed by Defendant Carlos I. Uresti in the above-referenced case. (Docket Entry 414.) This motion has been referred to the undersigned for disposition pursuant to 28 U.S.C. §636(b). For the reasons set out below, the motion is **GRANTED IN PART**.

Defendant was represented by retained counsel through trial and sentencing in this case. He has appealed from his conviction and sentence. (*See* Docket Entry 413.) In his motion, Defendant indicates that he is financially unable to afford to retain counsel for the appeal, and he asks for appointment of counsel by the Court under the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A. (Docket Entry 414, at 1.) He further requests that the Court appoint attorney Michael McCrum, who served as one of trial counsel in the case, as the attorney on appeal. (*Id.*)

The CJA authorizes the Court to provide counsel “for any financially eligible person who . . . is charged with a felony.” 18 U.S.C. § 3006A(a)(1)(A). Counsel must be provided “at every stage of the proceedings from his initial appearance before the United States magistrate judge or the court through appeal.” 18 U.S.C. § 3006A(c). “If at any stage of the proceedings, including an appeal,

the United States magistrate judge or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel.” *Id.*

“Financially eligible” persons under the CJA include “any person financially unable to obtain adequate representation.” 18 U.S.C. § 3006A(a)(1). Defendant has submitted a financial affidavit in support of his request for appointed counsel. The affidavit indicates that Defendant still has substantial assets; however, these assets are insufficient to pay the \$6,345,441 in restitution that has been ordered in this case. (*See* Docket Entry 407, at 7.) In light of these circumstances, the Court finds that Defendant is no longer financially able to retain counsel, and that the interests of justice dictate appointment of appellate counsel in this case. 18 U.S.C. § 3006A(c).

Although the Court finds appointment of appellate counsel to be appropriate, it will not appoint Mr. McCrum as appellate counsel for Defendant. “Defendant has a constitutional right to counsel, but not to counsel of his own choice.” *United States v. Robinson*, 555 F.2d 429, 430 (5th Cir. 1977). The San Antonio Division of the U.S. District Court for the Western District of Texas maintains a panel of qualified attorneys for appointment in criminal cases. *See* Amended Plan for Appointment of Counsel and Other Services Pursuant to the Criminal Justice Act 18 U.S.C. § 3006A (Dec. 12, 2012). Under the Amended Plan, the panel is subdivided into various panel categories based on the attorneys’ qualifications, experience, and willingness to serve; the categories include an “appellate category” of attorneys who are designated to “handle appeals to the Fifth Circuit Court of Appeals.” *See id.* at 5. Although Mr. McCrum serves in other panel categories under the Amended Plan, he does not serve in the appellate category.

For these reasons, it is hereby **ORDERED** that the Motion for Appointment of Appellate Counsel (Docket Entry 414) is **GRANTED IN PART**. By separate Order, the Court will appoint

an attorney from the appellate category of qualified panel attorneys to serve as counsel for Defendant on appeal in this case.

SIGNED on July 12, 2018.



Henry J. Bemporad
United States Magistrate Judge